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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

AHMED FOUAD,

Petitioner,

v.

ICE FIELD OFFICE DIRECTOR,

Respondent.

Case No. C11-654-TSZ-JPD

REPORT AND
RECOMMENDATION

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I. INTRODUCTION AND SUMMARY CONCLUSION

Petitioner Ahmed Fouad is a native and citizen of Ethiopia who is being detained without bond by the United States Immigration and Customs Enforcement (“ICE”) pending completion of his removal proceedings before the Immigration Court. On April 15, 2011, petitioner, proceeding pro se, filed the instant petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging his continued detention. (Dkt. No. 7.) As relief, he requests that this Court “[o]rder the Petitioner be released on supervised release pending all finality or that the court orders the Agency to hold a bond hearing where individual factors are considered that can allow for the release of the Petitioner pending the conclusion of his legal matters with ICE and the District Court and the Ninth Circuit.” *Id.* at 2. Respondent has filed a motion to dismiss, arguing that petitioner is lawfully detained as a criminal alien with a final conviction under the

1 mandatory detention provisions of Section 236(c) of the Immigration and Nationality Act
2 (“INA”), 8 U.S.C. § 1226(c), pending completion of his immigration proceedings. (Dkt. No.
3 12.)

4 For the reasons set forth below, the Court recommends that respondent’s motion to
5 dismiss be GRANTED, and that this matter be DISMISSED with prejudice.

6 II. BACKGROUND AND PROCEDURAL HISTORY

7 Petitioner was admitted to the United States on July 13, 1982, as a refugee.
8 (Administrative Record (“AR”) at L30-32.) He subsequently adjusted his status to lawful
9 permanent resident retroactive to his date of admission. (AR L344.) On July 15, 2009,
10 petitioner was convicted in the Superior Court of Washington for King County of a Violation of
11 the Uniform Controlled Substances Act: Deliver Cocaine, and was sentenced to twelve months
12 plus one day confinement. (AR R103-12.) Petitioner did not appeal his criminal conviction to
13 the Washington State Court of Appeals.

14 On or about April 1, 2010, petitioner was transferred from the Stafford Creek Corrections
15 Center in Aberdeen, Washington, to ICE custody pursuant to an immigration detainer. (AR L2-
16 3, R102-03.) Petitioner was served him with a Warrant for Arrest of Alien and a Notice to
17 Appear, placing him in removal proceedings and charging him as subject to removal from the
18 United States under INA § 237(a)(2)(A)(iii), for having been convicted of an aggravated felony
19 as defined in INA § 101(a)(43)(B), relating to the illicit trafficking in a controlled substance; and
20 under INA § 237(a)(2)(B)(i), for having been convicted of a violation of a law relating to a
21 controlled substance. (AR L5-7.) ICE made an initial custody determination to detain petitioner
22 in the custody of the Department of Homeland Security without bond. (AR L2.)

1 On or about April 7, 2010, petitioner filed a Motion to Terminate Removal Proceedings,
2 claiming that his criminal conviction was on direct appeal and could not be considered by an
3 Immigration Judge (“IJ”) until it is final. (AR L8-9.) However, two searches of state court
4 records indicated that no appeal was ever filed. (AR L37-38, R178-79.) On August 27, 2010, an
5 IJ denied petitioner’s motion to terminate removal proceedings, finding that he had failed to
6 timely appeal his criminal conviction, that his criminal conviction was final for immigration
7 purposes, and that he had failed to prove United States citizenship. (AR L411-12.) On May 3,
8 2011, an IJ ordered petitioner removed from the United States to Ethiopia based on the chargers
9 contained in the Notice to Appear. Petitioner timely appealed the IJ’s decision to the Board of
10 Immigration Appeals (“BIA”). Petitioner’s appeal remains pending with the BIA.

11 On April 15, 2011, petitioner filed the instant habeas petition. (Dkt. No. 7.) On June 1,
12 2011, respondent filed a motion to dismiss. (Dkt. No. 12.) Petitioner did not file a response.

13 III. DISCUSSION

14 Section 236(c) of the INA provides that “[t]he Attorney General shall take into custody
15 any alien who” is deportable from the United States because he has been convicted of certain
16 crimes specified in the provision. INA § 236(c)(1)(B), 8 U.S.C. § 1226(c)(c)(1)(B). Section
17 236(c) states, in part, as follows:

18 The Attorney General shall take into custody any alien who –

19 . . .

(B) is deportable by reason of having committed any offense covered in section
1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

20 . . .

when the alien is released, without regard to whether the alien is released on parole,
21 supervised release, or probation, and without regard to whether the alien may be arrested
or imprisoned again for the same offense.

22 8 U.S.C. § 1226(c). Unlike non-criminal aliens who are detained under INA § 236(a), criminal
23 aliens detained under INA § 236(c) during removal proceedings are not entitled to a bond
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1 hearing and are not provided the opportunity to show that their detention is unnecessary because
2 they are not a danger to the community or a flight risk. *See Casas-Castrillon v. Dep't of*
3 *Homeland Sec.*, 535 F.3d 942, 946 (9th Cir. 2008).

4 In *Demore v. Kim*, 538 U.S. 510, 531 (2003), the Supreme Court held that the mandatory
5 detention of an alien under INA § 236(c) was a constitutionally permissible part of the removal
6 process. In reaching that conclusion, the Supreme Court emphasized that under INA § 236(c),
7 “not only does detention have a definite termination point, in the majority of cases it lasts for less
8 than 90 days” *Id.* at 529. The Supreme Court held that “Congress, justifiably concerned
9 that deportable criminal aliens who are not detained continue to engage in crime and fail to
10 appear for their removal hearings in large numbers, may require that persons such as respondent
11 be detained for the brief period necessary for their removal proceedings.” *Id.* at 513.

12 In the present case, ICE charged petitioner with being removable from the United
13 States under INA § 237(a)(2)(A)(iii) and 237(a)(2)(B)(i) based upon his conviction for illicit
14 trafficking in a controlled substance. (AR L5-7.) Thus, petitioner falls within the group of
15 criminal aliens described in INA § 236(c)(1)(B) for whom detention is mandatory pending
16 completion of removal proceedings. The Court concludes that petitioner’s detention pending
17 the outcome of his removal proceedings is required by INA § 236(c) and is not
18 unconstitutional. *See Demore*, 538 U.S. at 531.


19 In sum, the Court does not find any basis in the present case to depart from the express
20 requirement of mandatory detention under INA § 236(c) as upheld by the Supreme Court in
21 *Demore*. *Id.* Accordingly, petitioner’s request for habeas relief from mandatory detention
22 should be dismissed.

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1 IV. CONCLUSION

2 For the foregoing reasons, the Court recommends that respondent's motion to dismiss be
3 GRANTED, and that this matter be DISMISSED with prejudice.

4 DATED this 12th day of July, 2011.

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6 JAMES P. DONOHUE
7 United States Magistrate Judge
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